

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant and Owner: Stephan Gharabegian, 38 Laurel Street, Watertown, MA 02472

Date Application filed with the Town Clerk: April 4, 2006

Nature of request: Petitioner seeks a Special Permit, under Section 9.22 of the Zoning Bylaw, to convert from a sorority to a fraternity.

Location of property: 11 Phillips Street (Map 11A, Parcel 33, R-G Zone)

Legal notice: Published in the Daily Hampshire Gazette on April 26 and May 3, 2006, and sent to abutters on April 26, 2006.

Board members: Tom Simpson, Barbara Ford and Hilda Greenbaum

Submissions: The applicant submitted the following documents:

- Plans entitled "Floor Plans", dated 5/31/2006, prepared by David Schatzle Architect, showing floor plans of basement, first floor, second floor and third floor and a site plan;
- Aerial Photograph and Site Plan of the neighborhood from Amherst GIS Viewer, dated May 30, 2006;
- A Guarantee to be signed by tenant's parents, regarding safety and security issues;
- The property information card from the Town Assessor's Office regarding 11 Phillips Street;
- A site plan with dimensions, undated, showing the location of the house and the parking lot;
- Declaration regarding Tenant/Lessee Notification, dated May 8, 2006;
- Lease and Addendum between Zeta Beta Tau, Inc., and Knight Properties, LLC, dated May 2, 2006;
- Photographs of garbage and debris from around town, taken in June 2006.

The Planning Department submitted the following documents:

- Memorandum dated May 5, 2006, commenting on the application;
- A marked-up copy of a plan originally submitted by the applicant, undated, submitted prior to the May 11, 2006, hearing, showing existing and proposed dumpster locations;
- Special Permit ZBA FY90-45 issued to Delta Zeta House Corporation, modifying Special Permit ZBA FY88-35, to allow transfer of ownership and to allow continued operation of an existing non-conforming sorority.

The Inspection Services Department submitted the following documents:

- Letter from Mark Snow, Building Inspector, dated February 1, 2005, regarding the Sorority House known as Delta Zeta, informing the sorority that a new Special Permit is required in order to continue to operate the house as a sorority;

- A letter from Mark Snow, dated May 10, 2006, listing concerns of the Inspection Services Department with regard to the current application;
- Email from Mark Snow, dated June 7, 2006, regarding 374 North Pleasant Street, prior home of the ZBT Fraternity, which intends to occupy the house at 11 Phillips Street.

The Health Department submitted the following documents:

- Email from Dave Zarozinski, dated May 8, 2006, regarding the last inspection done on the house.

The Fire Department submitted the following documents:

- A photograph of the rear of the house, submitted at the public hearing on June 8, 2006, by Bill Klaus, Fire Prevention Officer;
- Memorandum from Michael Zlogar, Assistant Chief, dated May 11, 2006, containing general comments and comments on access, water supply and the building.

Members of the public submitted the following documents:

- Email and 6 photographs from an abutter, Winnifred Manning, of 61 Fearing Street, dated June 7, 2006, in opposition to the application;
- Letter from an abutter, Reza Shafie, owner of properties at 51 Phillips Street and 26 Allen Street, dated June 7, 2006, in support of the application;
- Petition urging the Zoning Board of Appeals to deny the application, undated, with 19 signatures.

Site Visit: May 9, 2006

At the site visit the Board was met by the applicant and owner of the property, Stephan Gharabegian, co-owner (with his wife) of Knight Properties. The Board observed the following:

- The location of the house on a quiet side street surrounded by multi-family, two-family, and single-family houses and across the street from a University of Massachusetts office building;
- The property line on the east side and the fence and property line on the west side of the site;
- The interior of the house including private and public rooms on the basement, first floor, second floor and third floor levels, and the rear exit staircase;
- The alarm system and the heating system;
- The parking area at the rear of the house, the driveway and proposed locations for the dumpster.

Public Hearing: May 11, 2006.

At the public hearing the applicant, Stephan Gharabegian, and his attorney, Roscoe Sandlin, presented the petition. Also present were Jason Barber, of 374 North Pleasant Street, the president of the ZBT Fraternity, Jessie Brown, of 439 Shutesbury Road, a full-time staff member of the management company, Knight Properties, and Chris Hans, of 374 North Pleasant Street, the proposed resident manager. Mr. Sandlin made the following statements:

- The applicant is seeking a Special Permit to convert the building from a sorority to a fraternity;
- He purchased the property in September 2005 and currently rents the house to individuals;
- He has submitted to the Board the lease which will be used with the new tenants;
- Behavioral issues are addressed in the lease, including noise control and party provisions, excerpted from documents of the UMass Office of Fraternities and Sororities and from other UMass behavioral control documents;
- Chris Hans is proposed to be the resident manager; he is not a fraternity member;
- Sixteen people will be living in the house and there is parking space available for a minimum of 10 cars.

Mr. Sandlin asserted that the property conforms to the Bylaw and that the house could be a three-family house. [The memorandum, dated May 5, 2006, submitted to the Board by the Planning Department, stated that the property was non-conforming in several ways and that the previous Special Permit had expired in 1992. In addition the lot is non-conforming as to size even for a one-family dwelling.]

Bonnie Weeks, Building Commissioner, stated that the inspection done in September 2005 had shown a building occupancy level of 16 people. The Building Inspectors perform biannual inspections on rental properties. There are 10 bedrooms.

Mr. Gharabegian made the following statements:

- He will provide a floor plan;
- There were four people currently living in the house;
- Chris Hans, the proposed resident manager, is not affiliated with the fraternity; he will be 23 years old in November and he is a graduate student;
- Jessie Brown is a full-time staff member of Knight Properties who will be available 24 hours a day to deal with maintenance and management issues;
- Knight Properties is owned by Mr. Gharabegian and his wife.

Mr. Simpson asked about the previous Special Permit ZBA FY90-45 that had expired within two years of the date of filing. He did not receive an answer to this question.

Ms. Greenbaum asked about the occupancy level of 16 people and whether that included the resident manager. She also asked about the number of guests who can be on site. She expressed concern about the small size of the house and of the rooms.

Mr. Gharabegian stated that each tenant is allowed to invite 2 guests to events at the house. Mr. Sandlin noted that this would mean a total occupancy of 45 people, or 15 residents plus 2 guests for each resident, which equals 45 people. Mr. Sandlin also noted that one of the criteria for fraternity membership is academic achievement.

There was discussion about the size of the rooms in the house versus the size of standard rooms in dormitories and the size of rooms in the house at 374 North Pleasant Street where many of the fraternity members have lived since September 2005.

Bonnie Weeks noted that the Health Code has requirements relating to ceiling height and minimum square footage allowable for each resident, for bedrooms.

Mr. Simpson asked about the kitchen and dining facilities. Mr. Barber stated that the kitchen will be kept clean and sanitary, that fraternity members will clean up after themselves or that the house manager will clean it. He also noted that most fraternity members have meal plans and eat in the dining commons on campus. Generally the fraternity members will not eat together.

Mr. Simpson asked about maintenance of the house. Mr. Gharabegian stated that he is responsible for maintenance and that the fraternity brothers will not be responsible, even though the lease says that the tenants are responsible for snow plowing and landscape maintenance. The steps and walkway will be shoveled by the tenants but an employee of Knight Properties will plow the driveway. Knight Properties will hire someone to clean the house.

The Board requested a plan of the building and the rooms, including information on how many people will live in each room and a site plan showing the dumpster location and parking spaces and an area for snow storage and further requested that the plans be professionally drawn by a surveyor, engineer or architect..

Mr. Gharabegian stated that “No Parking” signs will be installed to keep the driveway clear for access by emergency vehicles.

The Board discussed the common space inside the house including the living room and basement. The living room currently contains a pool table with little room left for people. Mr. Barber stated that the fraternity members will use the basement for watching sports games on television. The Board discussed areas for outdoor recreation. Mr. Gharabegian stated that the front lawn could be used for recreation, but that there would be no furniture allowed on the front lawn, and that the parking lot can be used for soccer games.

The Board discussed parking issues, including guest parking. Mr. Barber stated that many of the fraternity members have on-campus parking and will not be parking at the house, estimating that only 8 or 9 cars would actually be parked at the house. Mr. Gharabegian stated that there will be no guest parking on site.

The Board discussed the contents of the letter from Mark Snow, dated May 10, 2006, including the resident manager, maintenance of the house and property, the need for a floor plan, parking and the kitchen.

Mr. Sandlin stated that the resident manager will be approved by the Lessor (the applicant) and that the Lessor reserves the right to approve the fraternity members who will live in the house.

The Board noted that it could limit the duration of a Special Permit if one were granted. Mr. Sandlin suggested a one-year duration with the possibility of renewal. He also stated that Mr. Gharabegian owns other properties in Amherst.

The Board discussed what would happen if another owner purchased the house.

Bill Klaus, Fire Prevention Officer with the Amherst Fire Department, stated his concerns about application, including the following:

- The status of the Certificate of Occupancy for 374 North Pleasant Street, the former home of ZBT fraternity;
- The fact that 374 North Pleasant Street had been in violation of codes for 40 days;
- The possibility that the problems at 374 North Pleasant Street would be transferred to the house at 11 Phillips Street, including an over-crowded parking lot;
- The possibility for dumpster fires which are not easily accessible by fire apparatus;
- Guest parking;
- The fact that emergency vehicles will not be able to maneuver in an over-crowded parking lot;
- The problem of egress for the 2 bedrooms in the basement;
- The fact that ceilings in the third floor bedrooms are low;
- The fact that the fire alarm system has been subject to false alarms and malfunctions.

He also mentioned that the house might be exempt from the requirements for a sprinkler system. He discussed the existing fire stations, extinguishers, the inspections of extinguishers, the need for a hood system in the kitchen and the possible need for an ancillary fire-suppression system.

The Board discussed the fact that the fire escape for the upper floor was accessible only through a bathroom.

They also discussed with Officer Klaus what would happen in the case of a dumpster fire.

Michael Wiseman, Director of the Office of Fraternities and Sororities at UMass, made the following statements:

- Other groups had occupied 374 North Pleasant Street in the past and ZBT had only been there since September 2005; the house was already in poor condition prior to ZBT moving in;
- He represents the University during inspections of fraternity and sorority properties; someone from his office visits every facility once a month;
- He described the judicial process at UMass that can lead to a fraternity or sorority losing its recognition by the university; he stated that he had met with Mr. Gharabegian and Mr. Barber about the University's rules regarding fraternities.
- He noted that the fraternities at 395 North Pleasant Street and 317 Sunset Avenue had been disciplined and suspended for three years.
- There had been no resident manager at 374 North Pleasant Street; the landlord of the property was based in Indianapolis, Indiana, a different situation from that of 11 Phillips Street.

The Board discussed with Mr. Wiseman the process for weeding out individuals who caused problems at fraternities.

Mr. Gharabegian stated that, although the fraternity as a whole was signing the lease, individual's parents would be required to sign an agreement as guarantors. Mr. Barber noted that the fraternity has non-resident members who would be eager to take the place of an individual who might get "kicked out" for misbehavior.

The Board discussed drinking and party problems. Mr. Barber pointed out that no member of the fraternity has been arrested. He further noted that it is his job as president to handle the problem of under-age drinking.

Mr. Wiseman stated that UMass is aware of the community's concerns and that UMass needs to do more to work with the town on this problem. He has met with neighbors regarding their concerns about students. He further noted that ZBT's national office is responsive and works with its chapter presidents to keep houses in a proper manner.

Howard Paul of 355 Middle Street and Greg Briggs of 29 Henry Street spoke in opposition to the application as follows:

- They own the house next door, a two-family house at 19 Phillips Street;
- The house under consideration is not a sorority now, but a house with individual renters;
- The neighborhood is currently about 50% students and 50% permanent residents, which puts it at a "tipping point";
- The poor condition of the neighborhood on Saturday or Sunday morning reflects what has gone on the night before;
- They noted that Phillips Street already has lots of problems;
- The fraternity would have an increased detrimental effect over the previous use as a sorority; there is a strong difference between a sorority and a fraternity;
- There are no other fraternities on the street; however, sororities do exist in the neighborhood.

Mr. Sandlin summarized what had been discussed as follows:

- His client is committed to addressing the concerns of the town;
- The Board has asked for floor plans, a site plan, a parking plan and the proposed dumpster location;

- His client would meet with the Fire Department and the Building Department;
- The Health Department had inspected the house on October 5, 2004.

The Board noted that the owner has two years in which to resume the use as a sorority or to request a change of use under Section 9.22 of the Zoning Bylaw. After two years the legality of the non-conforming use will lapse, unless it is resumed or legally changed within the allotted time. The Board noted that the new plans should show screening of the parking lot, that parking spaces should adhere to the Bylaw in terms of size and that half of the spaces can be compact spaces. The Board also noted that the Lease submitted by the applicant is a lease between Knight Properties and the local chapter of Zeta Beta Tau, not the national organization.

Tom Simpson MOVED to continue the evidentiary portion of the public hearing to June 7, 2006, at 7:30 p.m. Barbara Ford SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing – June 7, 2006 and June 8, 2006

On June 7, 2006, Ms. Greenbaum appeared in the First Floor Meeting Room of Town Hall and continued the evidentiary portion of the public hearing to June 8, 2006, at 8:00 p.m., due to conflicts with Town Meeting.

On June 8, 2006, the Board continued the evidentiary portion of the public hearing. Mr. Simpson read several documents and also presented photographs of the house at 374 North Pleasant Street that had been received by the Board, for the record, as follows:

- Email from Mark Snow, Building Inspector, dated June 7, 2006;
- Letter from Reza Shafie, abutter, owner of 26 Allen Street, dated June 7, 2006;
- Email and photographs of 374 North Pleasant St., from Winnifred Manning, abutter, of 61 Fearing Street, dated June 7, 2006.

Mr. Gharabegian presented the plans and aerial photographs that he had submitted to the Board since May 11, 2006. The Board noted that these appeared to be accurate plans. They discussed the location of the dumpster.

Mr. Gharabegian presented photographs that he had taken that day showing trash and debris at many locations throughout town, deposited by students moving out of their apartments. He noted that this is a problem throughout town and is not peculiar to fraternities. It is the landlord's responsibility to clean up the trash. He also noted the need for more frequent pick-ups by trash haulers during the last week of school. He presented the Guarantee that he would require parents of tenants to sign.

Ms. Greenbaum inquired about the outside dimensions of the house and noted that the house has approximately 900 square feet per floor. She noted that the house and the property are both small. The lot is only about 9,800 square feet.

Mr. Gharabegian stated that he will propose a four foot high fence to screen the parking lot, noting that the Fire Department had requested a gate at the back of the property.

Mark Snow asked about the age of the resident manager and asked whether someone who is almost the same age as the fraternity members would be able to maintain order. He asked about how the kitchen will be maintained. He made the following comments:

- This is a quiet neighborhood;

- The number of people (16) proposed to live in the house is high and the number of proposed parking spaces (10) does not match the number of people;
- The lease places responsibility on the lessees for maintenance;
- Past experience has shown that fraternities do not maintain their properties as well as sororities;
- He has concerns about the maintenance of the exterior of the building and the property and the lack of structure and organization of fraternities;
- He contrasted that comment with the fact that sororities generally have house mothers and a cook;
- He noted that fraternities do not place a high priority on maintaining their buildings in good, safe and sanitary condition;
- He recommended that the Board impose strict conditions that are enforceable, if it chooses to grant the Special Permit.

Mr. Gharabegian stated that the resident manager will be a graduate student, not a fraternity member, that Knight Properties regularly tows cars that are improperly parked, that Knight Properties will do the maintenance if the lessee does not, that the kitchen will be maintained and that a cleaning person will come once a month.

Richard Gold of 55 Sand Hill Road, Ed Sunderland of 315 Lincoln Avenue, Seymour Friedman of 10 Allen Street and Bernie Rubenstein of 38 Fearing Street spoke in opposition to the application. They noted the following:

- Some of them are landlords in the area;
- Four sororities are located in the neighborhood; they have not caused a problem;
- This house would be the only fraternity in the neighborhood;
- Fraternities are different from and more non-conforming than sororities;
- There are more children in the neighborhood than in previous times and fraternities are incompatible with children;
- Residents of fraternities park on sidewalks and do not shovel the sidewalks;
- Children cannot walk on the sidewalks due to cars and snow;
- Fraternity members make bad comments to neighbors and children who walk by their houses.

Howard Paul of 355 Middle Street, co-owner of 19 Phillips Street, presented the Board with a petition urging the Board to deny the application. [It had been signed by 19 residents of the neighborhood.]

Winnifred Manning of 61 Fearing Street spoke in opposition to the application and mentioned the letter (email) that she had written to the Board. She stated that parties on Phillips Street often attract students from South West Dormitories on the UMass campus. There is a lot of foot traffic and noise in the neighborhood as a result.

Jim Turner of 23 Phillips Street, George Treyz of 306 Lincoln Avenue, Sandy Lillydahl of 16 North Hadley Road and Elisa Rubenstein of 38 Fearing Street spoke in opposition to the application. They noted the following:

- They agreed with and reiterated Ms. Manning's comments;
- Some former fraternities in the neighborhood have been turned into one and two-family houses; they do not want the neighborhood to revert back to fraternities;
- Fraternities are different from sororities in that they are extremely disruptive;
- Fraternities have more members than just the residents of the house; these additional members are invited to parties;

- They fear that people will come into the neighborhood in the middle of the night;
- Students cut through the neighborhood on the way to and from parties;
- Trash is strewn around by students;
- Headlights and the noise of car doors from students' cars coming and going in the middle of the night disrupt the neighborhood;
- They are concerned about the repetition of violence that has occurred at local fraternities;
- They are concerned about overflowing garbage dumpsters and parking lots;
- They are concerned about walking by fraternities and having things shouted to them.

Sue Hugus of 140 Fearing Street spoke in opposition to the application. She noted the following:

- There is a neighborhood organization called the Sunset-Pleasant Organization that was formed to deal with vandalism and problems in the neighborhood and to preserve the character of the neighborhood;
- The neighborhood organization would like more families to move in;
- Students walk down the center of the street, causing a danger to themselves and others;
- There is disruptive behavior;
- Fraternities should be required to have a house mother who lives in the building.

Bill Klaus of the Amherst Fire Department made the following comments and recommendations:

- He had met with the owner; they agreed on a fire lane at the site;
- He showed a photograph of the rear of the house with furniture and debris piled near the house;
- He suggested granting the permit for one year, with a possible renewal after that time;
- He recommended that no boarders (residents who are not fraternity members) be allowed;
- He recommended that the resident manager be older than the person who is currently proposed to be the manager;
- The Fire Department will evaluate whether a hood and fire-suppression system will be required for the stove in the kitchen.

Marilyn Smith of 14 Allen Street, Irene Friedman of 10 Allen Street, Edwin Gentzler of 43 Fearing Street and Jenny Spencer of 43 Fearing Street spoke in opposition to the application and reiterated the comments of previous speakers and made the following additional comments:

- The neighborhood is concerned about fraternities, not students;
- Landlords can find responsible student tenants;
- Fraternities have no oversight;
- Sororities are managed by national organizations;
- The main reason for the existence of fraternity houses is to have parties;
- The mess around fraternity houses is there all year, not just when students are moving out in May;
- Handicapped people cannot negotiate the sidewalks because of fraternity-associated cars parking on the sidewalks.

Ms. Ford noted that instead of the sixteen people originally proposed the Board could impose a condition limiting the number of residents to ten people plus the resident manager.

Mr. Sandlin commented as follows:

- The neighborhood has had some bad experiences;
- The applicant is proposing to take concrete steps to make his plan work;
- It is in the applicant's interest to do what he says he will do;

- The point of the photographs of garbage around town is to show that the garbage problem is not unique to fraternities.

Hilda Greenbaum MOVED to close the evidentiary portion of the public hearing. Tom Simpson SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

The Board discussed the application. Mr. Simpson made the following comments:

- Section 9.22 of the Zoning Bylaw allows the Board to grant a Special Permit for a non-conforming use that is not substantially different in its effect on the neighborhood than the existing use;
- A fraternity is a substantially different use from a sorority; fraternities have a different “mind set”;
- The best contracts and managers cannot solve problems before they occur;
- Fraternities are a drain on the fire and police forces;
- He will vote to deny the application.

Ms. Greenbaum stated that Amherst College had closed its fraternities and converted the buildings into dormitories. She referred to Section 9.22 of the Zoning Bylaw and stated that the proposed use would be substantially different in character and in its effect on the neighborhood than a sorority or a single family dwelling, which it has been for the past year. In addition she stated that the house and yard are too small. Ms. Ford stated that the proposed use is inappropriate since it would be increasing the non-conformity.

Public Meeting – Findings:

Under Section 9.22 of the Zoning Bylaw the Board found that:

- The proposed use would be substantially different in character from the previous use and would have a substantially more detrimental effect on the neighborhood and on property in the vicinity.

Under Section 10.384 of the Zoning Bylaw the Board found that:

- Adequate and appropriate facilities would not be provided for the proper operation of the proposed use because the house and the property were too small to house a fraternity.

Public Meeting – Zoning Board Decision

Ms. Greenbaum MOVED to deny the application because the proposed use would be substantially more detrimental to the neighborhood than the previous use. Ms. Ford SECONDED the motion. The Board discussed the motion.

For all the reasons stated above the Board VOTED unanimously to approve the motion to DENY the application, under Section 9.22 of the Zoning Bylaw, to convert from a sorority to a fraternity, as applied for by Stephan Gharabegian, at 11 Phillips Street, (Map 11A, Parcel 33, R-G Zone).

TOM SIMPSON

BARBARA FORD

HILDA GREENBAUM

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2006.
NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.